

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERT W. JACKSON, III,) Consolidated
) No. 361, 2011
Appellant, Defendant Below,)
) Court Below: Superior Court
v.) of the State of Delaware in
) and for New Castle County
STATE OF DELAWARE,)
) Cr. ID No. 92003717D1
Appellee, Plaintiff Below,)
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ROBERT W. JACKSON, III,)
) No. 364, 2011
Petitioner, Below Appellant,)
) Court Below: Superior Court
v.) of the State of Delaware in
) and for New Castle County
CARL C. DANBERG,)
) C.A. No. 11C-06-080
Respondent, Below Appellee.)

Submitted: July 27, 2011

Decided: July 27, 2011

Before **STEELE**, Chief Justice, **HOLLAND**, **BERGER**, **JACOBS**, Justices,
NOBLE, Vice Chancellor* constituting the court *en banc*.

ORDER

This 27th day of July 2011, it appears to the Court that:

1. Robert W. Jackson, III, is currently under an execution order of the Superior Court of the State of Delaware. His execution is scheduled to be carried out on July 29, 2011, between the hours of 12:01 a.m. and 3:00 a.m.

2. In case No. 361, 2011, Jackson asks this Court to grant a stay of his execution: (a) to enable this Court to decide an important question of Delaware

*Sitting by designation pursuant to Del. Const. Art. IV § 12.

law—whether Superior Court Criminal Rule 61(l)(7) prevents the Superior Court from exercising the authority delegated to it by this Court, pursuant to Supreme Court Rule 35(e), to consider and grant a stay of execution; and (b) under this Court’s original and constitutional jurisdiction to grant injunctive relief, including stays of execution, to enable Jackson to seek review by the United States Supreme Court of this Court’s decision denying relief on Jackson’s *Gardner*,¹ due process,² and Sixth Amendment right to counsel claims. *See Jackson v. State*, 21 A.3d 27 (Del. 2011).

3. The Superior Court denied Jackson’s application for a stay based upon its interpretation of Supreme Court Rule 35(e), Superior Court Criminal Rules 61(1) (6) and (7) and Administrative Directive 131(10). Although Jackson asks us to review that interpretation by the Superior Court, we decline to reconcile the alleged conflict in the court rules and Administrative Directive. Instead, we consider his application for a stay under Supreme Court Rule 35(e) and our jurisdiction pursuant to Article IV § 11(7) of the Delaware Constitution.

4. We have carefully considered the briefs and oral arguments of the parties in accordance with the four standards for the issuance of a stay set forth in *Steckel v. State*, 884 A.2d 483, 487 (2005). A majority of the Court has

¹ *Gardner v. Florida*, 430 U.S. 349 (1977).

² *Caperton v. A.T. Massey Coal Co., Inc.*, 129 S.Ct. 2252, 2258 (2009).

concluded that Jackson has not carried his burden of persuasion with regard to any of the four criteria set forth in *Steckel*.

5. Accordingly, a majority of the Court has concluded that Jackson's request for a stay of execution in Case No. 364, 2011 should be denied.

6. In case No. 364, 2011, Jackson has filed a separate Motion for Stay of implementation of the revised lethal injection regulations (which, if granted, would operate as a *de facto* stay of execution), alleging that Commissioner Carl C. Danberg and the Department of Correction have failed to comply with Delaware's Administrative Procedures Act ("APA") when promulgating Delaware's execution policies and procedures.

7. A majority of the Court has concluded that Jackson's Motion for a Stay in Case No. 364, 2011 should be denied for the reasons stated by the Superior Court in its decision dated July 14, 2011.

NOW, THEREFORE, it is hereby ordered that in Case No. 361, 2011 and Case No. 364, 2011 Jackson's Motions for a Stay of execution of his death sentence are denied. The mandate shall issue immediately.

BY THE COURT:

/s/ Randy J. Holland
Justice